

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TERRY ELLIS, RONALD FULLER,
STEVEN GAVIN, ADAM KRAVITZ,
DEANNA LENTZ, CHRISTOPHER MEE,
TODD SPARKS, and SAMUEL
BRANDISH,

Plaintiffs,

v.

CLARK COUNTY DEPARTMENT OF
CORRECTIONS, CLARK COUNTY,
JUDGE JOHN HAGENSEN, RAFAELA
SELGA, a/k/a ELA SELGA, LISA
BIFFLE, LYNDA HARPER, DENNIS
DAVID, THOMAS STILLMAN,
JEFFREY MILLER, ROBERT
KRAMER, DONALD BRONSON and
KEITH GAPPMEYER,

Defendants.

CASE NO. 15-5449 RJB

ORDER ON CROSS MOTIONS FOR
SUMMARY JUDGMENT

This matter comes before the Court on Plaintiffs' Partial Motion for Summary Judgment (Dkt. 37) and Defendants' Motion for Summary Judgment (Dkt. 42). The Court has considered the pleadings filed in support of and in opposition to the motions and the file herein.

1 Plaintiffs, homeless individuals living in Clark County Washington, bring this civil rights
 2 action alleging that Defendants violated their constitutional rights when Clark County
 3 Department of Corrections Work Crews removed and destroyed Plaintiffs' property. Dkts. 1-9
 4 and 22. Plaintiffs allege that on most occasions, the work crews did so in Plaintiffs' presence
 5 and over their objections. *Id.* In their Amended Complaint, Plaintiffs make claims for violation
 6 of their Fourth, Fifth, and Fourteenth Amendment rights under the United States Constitution
 7 and for conversion under Washington state law. Dkt. 22, at 17-18.

8 Plaintiffs move for partial summary judgment, arguing that they are entitled to summary
 9 judgment as to Defendants liability for violations of Plaintiffs' constitutional rights and for
 10 conversion. Dkt. 37. Defendants move for summary dismissal of all claims. Dkt. 42. For the
 11 reasons provided, both motions (Dkts. 37 and 42) should be denied, in part, and granted, in part.

12 I. RELEVANT FACTS AND PENDING MOTIONS

13 A. FACTS

14 Different governmental agencies in Clark County contract with the Clark County
 15 Department of Corrections to send work crews to various parks and streets to clean up litter and
 16 do landscaping. Dkts. 38-16, at 8 and 46-3, at 6-7. Work crews are comprised of people
 17 convicted of criminal offenses in Clark County. Dkt. 38-16, at 17. Work crew supervisors, who
 18 are employees of Clark County, direct the crews. Dkt. 38-16, at 18. After the crews finish for
 19 the day, all items they pick up are taken to the dump. Dkt. 38-16, at 18.

20 Plaintiffs point to several instances between July 2012 and November 2014 in which they
 21 allege the Clark County Corrections work crews improperly took their property; each instance
 22 will be discussed more thoroughly below. Dkts. 38-5, at 2 and 38-9, at 2.

1 The Clark County Corrections Department is a part of the Clark County District Court.
 2 Dkts. 38-13, at 3-4 and 38-16, at 3. The presiding judge from 2010-2013 was Defendant Judge
 3 John Hagensen. Dkt. 38-15. According to Judge Hagensen, generally, all the Clark County
 4 District Court judges approved policies for the District Court as a group. Dkt. 38-15, at 5-6.
 5 Defendant Ela Selga is the court administrator and is supervised by the presiding judge of the
 6 Clark County District Court. Dkts. 38-13, at 3-4 and 38-16, at 3.

7 Ms. Selga was Defendant Linda Harper and Defendant Lisa Biffle's immediate
 8 supervisor, and has been in her position since 2006. Dkts. 38-13, at 2; 38-14, at 5. Ms. Harper
 9 supervised the Clark County Corrections work crew program, including the crew supervisors,
 10 from 2003 until January of 2014. Dkts. 38-13, at 2 and 38-14, at 2. Ms. Biffle started
 11 supervising the work crew program in January of 2014 when Ms. Harper retired. Dkt. 38-13, at
 12 2. Ms. Harper and Ms. Biffle were responsible for developing policies for the work crew
 13 program and training the crew supervisors. Dkt. 38-14, at 2-3.

14 According to Ms. Selga, she had authority to approve policies, and did approve the Clark
 15 County Corrections Department March 28, 2012 Written Policy 115 ("March 2012 WP 115"),
 16 which was developed by Ms. Harper. Dkt. 38-16, at 5-6. The March 2012 WP 115 provided:

17 **POLICY:** Clark County Correctional Work Crews are expected to clean up
 18 homeless/transient camps as part of our contractual obligations for both the
 County and various municipalities.

19 **PROCEDURES:**

20 1. If a camp has been abandoned or there is no one currently at the site
 21 immediately clean the camp and restore the area.

22 2. If a camp is currently occupied, notify those present of their need to clean the
 23 camp and vacate the area. Inform them that we will leave the area and return in
 one hour. Any property still remaining will be disposed of. . . .
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1 5. Cleaning up homeless camps is no different than cleaning up any other refuse
2 as long as you use the same precautions as you do everywhere else.

3 a. Give your crew members clear instructions before you begin.

4 b. Crew members are not to handle syringes. . .

5 c. Do not pick up feces or any item with feces on it.

6 d. Make sure all crew members are wearing gloves.

7 Dkts. 38-16, at 5-6 and 38-18, at 2.

8 Defendant Jeffrey Miller was a crew supervisor during the relevant period. Dkt. 38-17.

9 In regard to determining whether something was abandoned trash and needed to be picked up, he

10 testified that “if it ain’t, I guess a shrub, it gets picked up. It’s trash.” Dkt. 38-17, at 2-3. Other

11 than shopping carts, which he tries to return, he has not found other things that, in his opinion,

12 should be returned to the owner. Dkt. 38-17, at 4-5. Mr. Miller states that is often difficult to

13 tell whether a homeless person’s camp site is abandoned or not. Dkt. 38-17, at 8. He cannot

14 recall ever receiving training on how to determine whether property is abandoned. Dkt. 38-17, at

15 4. Even if he thought that someone had been there recently (within the last 24 hours), he still

16 picked up any items and disposed of them. Dkt. 38-17, at 8. There were instances when Mr.

17 Miller instructed the crews to pick up items even when someone who asserted ownership was

18 present. Dkt. 38-17, at 11-12. Sometimes, after an item had been picked up and placed in the

19 trailer, people would approach and claim the property belonged to them. Dkt. 38-17, at 11-12.

20 Mr. Miller refused to return any property once it was placed in the trailer or put in a trash bag.

21 Dkt. 38-17, at 11-12 and 14. He did not base these decisions on training or instruction, but on

22 his own determinations. Dkt. 38-17, at 12.

23 During the time when the March 2012 WP 115 policy was in effect, Ms. Harper testified

24 that if, while in a park, a crew chief came across a tent, a cook site, and clothes but no person,

they were to take all the items and clean up the site. Dkt. 38-14, at 6-7. Work crews were to

1 take any unattended items. Dkt. 38-14, at 9. According to Ms. Harper, even backpacks left at
2 bus stops could be taken and thrown away. Dkt. 38-14, at 12.

3 Plaintiff Steven Gavin states that his personal property was taken by a Clark County
4 Corrections work crew on or about July 2012. Dkt. 38-5, at 2. He maintains that his property
5 had not been abandoned at the time it was taken. *Id.* Mr. Gavin explains that he was camped at
6 the south side of Pearson Airfield and left for a meal. *Id.* He states that after a couple of hours,
7 around 7:30 a.m., he returned, and saw the work crew van. *Id.* Mr. Gavin testified that he spoke
8 with one of the work crew members, but he doesn't remember what they looked like, or how
9 many other crew members were there. Dkt. 43-7, at 9. He testified that he asked for his
10 property, and the crew wouldn't tell him anything. Dkt. 43-7, at 10. He asserts that all of his
11 property was taken, including his tent, sleeping bag, camp stove, cookware, utensils, clothes,
12 toiletries, MP3 player, headphones, and a bag of geodes. Dkt. 38-5, at 2. He indicates that he
13 did not receive any notice before the work crew removed his property and was not given any
14 information about how to retrieve it. *Id.*

15 Plaintiff Adam Kravitz asserts he sustained losses on two different dates. Dkt. 38-6. In
16 August of 2012, he was camping with friends near the north bank of the Columbia River in
17 Vancouver. Dkt. 38-6, at 3. He says that he stepped away for a short time. *Id.* When he
18 returned, the work crew was there removing his property and putting it in a trailer behind their
19 van. *Id.* He asked for the return of his property. *Id.* He asserts that the work crew supervisor
20 refused. *Id.* Mr. Kravitz states he was not given any notice or told how to retrieve his property.
21 *Id.* He maintains that the work crew supervisor told him if he continued to insist on having his
22 property returned, he would call the police and have Mr. Kravitz and his friends arrested for
23 illegal camping. *Id.* Mr. Kravitz states that he did not continue to try to get his property back
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1 from the work crew after the supervisor threatened to call the police because he did not want to
2 be arrested. *Id.* He also maintains that the Clark County Corrections work crew took his
3 property again in December of 2012 while he was at a Christmas party sponsored by a non-profit
4 organization – Share House. Dkt. 38-6, at 2. On the day in question, Mr. Kravitz left his
5 backpack, camping gear, clothes, driver’s license, a photograph of a now deceased child, and
6 other personal effects at a spot on the south side of State Route 14 near the intersection with I-5
7 in the city limits of Vancouver, Washington. *Id.* When he returned to the campsite, all his
8 possessions were gone and the tree under which he’d been camped had been trimmed. *Id.* Mr.
9 Kravitz states that he was “extremely discouraged” and went back downtown. *Id.* He maintains
10 that other homeless friends had also had their possessions taken and had seen the Clark County
11 Corrections work crew leaving their camps. *Id.* He asserts that “because of that and because of
12 the way my site was cleared and things were taken, [he is] positive that it was the work crew
13 which took [his] things as well.” *Id.* Mr. Kravitz states that he was given no notice before his
14 possessions were taken, and no information about how to recover them. *Id.*

15 Plaintiff Christopher Mee states that in August of 2012, his property, which was located
16 near the intersection of State Route 500 and St. John’s Boulevard in Vancouver, Washington,
17 was taken by a Clark County Corrections work crew. Dkt. 38-8, at 2. He left the property at his
18 campsite to get a meal, but asserts that he had not abandoned it. *Id.* Mr. Mee indicates that when
19 he returned to the site, he saw the work crew in the area and all of his stuff was gone. *Id.* Mr.
20 Mee states that he recognized the Clark County Corrections work crew because he “had been
21 assigned work in the past to work off fines.” *Id.* He states that his property included a tent,
22 sleeping bag, clothes, toiletries, suitcase, and photographs. *Id.* Mr. Mee maintains that he was
23 given no notice before the work crew took his property and did not try to get it back because he
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1 knew, based on his experience with working on them, that the work crew would not return his
2 property. *Id.* Mr. Mee states that while on the Clark County Corrections work crews, he was
3 instructed to remove property that appeared to belong to homeless people. *Id.*, at 3. He states
4 that on each occasion, the property did not appear to be abandoned. *Id.* When he expressed
5 concern about taking the un-abandoned property, Mr. Mee states that the work crew supervisor
6 told him if he didn't do as instructed, he would call someone to pick Mr. Mee up and he
7 wouldn't get work credit for the day. *Id.* Mr. Mee asserts that on none of the work crews he was
8 on gave people any warning that their possessions were going to be taken or any way to get them
9 back. *Id.* Mr. Mee indicates that after the work crews picked up the property, they would throw
10 it away. *Id.* Mr. Mee states that he remembers cleaning up camp sites of a number of
11 individuals near I-5 and Mill Plain Boulevard, Fourth Plain Boulevard, Falk Road, and Burnt
12 Bridge Creek Trail in Vancouver. Dkt. 38-12, at 2.

13 Plaintiff Deana Lentz states that in August of 2012, her personal property was taken by
14 the Clark County Corrections work crew. Dkt. 38-7. Ms. Lentz asserts that, at the time the
15 property was taken, she had not abandoned it. *Id.* It was in a triangle of trees west of MacArthur
16 Boulevard and north of North Blandford Drive in Vancouver, Washington. *Id.* Ms. Lentz
17 indicates that she had been camping at this location for around a month with her fiancé, Gerald
18 Cameron. *Id.* The day she asserts that her property was taken, she had just returned from work
19 around noon, and saw the work crew picking up her possessions. *Id.* and Dkt. 43-5, at 7. She
20 states that the "crew was in a white van with City of Vancouver markings, pulling a trailer with
21 an outhouse in it." Dkt. 38-7. In her declaration, she indicates that she approached the
22 supervisor, who appeared to be in a Clark County sheriff's uniform and asked if they could have
23 their possessions back. *Id.* He told them "no," and "tough fucking luck." *Id.* During her
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1 deposition, Mr. Lentz testified that she could not remember what the supervisor wore, but that he
2 was a “tall, kind of chunky,” white male. Dkt. 43-5, at 10-11. Ms. Lentz states that her property
3 included jewelry, tents, sleeping bags, tarps, clothing, Coleman cook-stove, coolers, barbecue,
4 dishes, utensils, tools, landscaping equipment, bike, family photographs, legal documents like
5 birth certificates, and her mother’s ashes. Dkt. 43-5, at 2-3. She maintains that she received no
6 notice that her property was going to be taken and no information on how to retrieve it. *Id.* at 2.

7 Plaintiff Terry Ellis states that on September 29, 2012 his personal property was taken by
8 a Clark County Corrections work crew. Dkt. 38-3, at 2. Mr. Ellis states that at the time his
9 property was taken, he had not abandoned it. *Id.* He asserts that he was waiting for a bus on the
10 north side of Mill Plain Boulevard in Vancouver, Washington when he saw a woman with a
11 disabled car nearby. *Id.* Mr. Ellis left his property in bags by the bus stop and went to help the
12 woman. *Id.* He saw a Clark County Corrections work crew van stop in front of his property. *Id.*
13 Mr. Ellis states that he approached a corrections employee, Mr. Miller, and told Mr. Miller that
14 the property was his. *Id.* Mr. Ellis maintains that he explained why he left his stuff, identified
15 the contents of the bags and asked to have his property returned. *Id.* Mr. Ellis asserts that Mr.
16 Miller refused. *Id.* Mr. Ellis states that the work crew took new clothes, which had been given
17 to him so that he could apply for work, and food. *Id.* Mr. Ellis asserts that the work crew gave
18 him no notice before they took his property, and gave him no information on how to recover his
19 property. *Id.*, at 3. Mr. Ellis also maintains that he has been camping at other locations and
20 observed the work crews attempted to take people’s property (that obviously wasn’t abandoned)
21 without warning or advance notice. *Id.*

22 In February of 2013, Clark County Corrections changed its policy regarding items that
23 were in containers. Dkt. 43-3, at 25. Ms. Harper testified that the change in policy occurred due
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1 to Mr. Ellis's complaints. Dkt. 46-3, at 3. The crew supervisors were told not to pick up
2 anything that was in containers, including bags, backpacks, tubs, tents, etc. Dkt. 43-3, at 25.
3 Ms. Harper states that all the crew chiefs were also told on or around February 23, 2013 to take
4 photographs of all the stuff that was strewn around on the ground. Dkt. 43-3, at 26. In a letter
5 dated March of 2013, Judge Hagensen indicated that the work crew supervisors were not to pick
6 up property from homeless camps. Dkt. 43-3, at 28. Defendant Selga sent out an email on
7 March 13, 2013, notifying the staff of the policy change, but did not personally train the work
8 crew supervisors on the policy. Dkt. 38-16, at 10. She left that up to Defendant Harper, who
9 was still the crew chiefs' supervisor. Dkt. 38-16, at 10.

10 Plaintiff Roland Fuller states that in April or May of 2013, he left his property in bushes
11 in Esther Short Park in Vancouver, Washington after being called into work by Labor Ready.
12 Dkt. 38-4, at 2. Mr. Fuller asked a friend, Larry, who is now deceased, to come pick up his stuff.
13 *Id.* and Dkt. 43-9, at 6. Mr. Fuller states that his friend reported that when he arrived, Mr.
14 Fuller's possessions were missing and that "the work crew was there throwing stuff away." Dkt.
15 38-4, at 2. Mr. Fuller maintains that at the time the property was taken, he had not abandoned it.
16 *Id.* He asserts that the property included his dentures, prescription glasses, sleeping bag, pad,
17 and tarp. *Id.*

18 On June 11, 2013, Defendant Harper formally redrafted the work crew policy related to
19 homeless camps, ("June 2013 WP 115"). Dkt. 38-16, at 11. This policy was approved by
20 Defendant Selga, but was not presented to Judge Hagensen for his approval. Dkt. 38-16, at 11-
21 12. This June 2013 WP 115 policy provided: "Clark County District Court Offender Work
22 Crews are NOT to remove any property or material from any homeless/transient camp." Dkt.
23 38-19, at 2.

1 Ms. Biffle took over as program manager from Ms. Harper on January 1, 2014. Dkt. 43-
2 4, at 4.

3 Plaintiff Samuel Bradish states that he is homeless and lives in Clark County,
4 Washington. Dkt. 38-2, at 2. Around July or August of 2014, he states that he was camping
5 with others in an area “located off Mill Plain and Lincoln at a location know as ‘Retard Hill.’”
6 *Id.* Mr. Bradish asserts that he was watching a friend’s property while she went to the store. *Id.*
7 According to Mr. Bradish, a Clark County Corrections work crew approached, and told him that
8 he had 10 minutes to clear away all his stuff. *Id.* Concerned for his friend’s property, he moved
9 hers first, and returned to retrieve his own. *Id.* When he returned, the work crew had taken his
10 property and was gone. *Id.* (He states he knew that it was a Clark County Corrections work
11 crew because he has seen them before. *Id.* He recognized their white van with a trailer attached
12 to it which housed a “porta potty” and tools. *Id.* He also recognized their lime green safety vests
13 and blue gloves. *Id.*) Mr. Bradish states that the work crew removed his personal property
14 including clothes, blankets, tent, tarps, dishes, utensils, legal documents (like his driver’s license,
15 Social Security card, Medicare card and Social Security Disability Insurance documents),
16 medications, letters, pictures, and other personal effects. *Id.* He maintains that he did not get
17 notice before the work crew arrived, and was not told “where, when, or how” he could retrieve
18 his property. *Id.* Mr. Bradish states that at the time his property was taken, he had not
19 abandoned it. *Id.*

20 Plaintiff Todd Sparks asserts that his personal property was taken by the Clark County
21 Corrections work crew on November 1, 2014. Dkt. 38-9, at 2. He maintains that, at the time it
22 was taken, he had not abandoned it. *Id.* He states that he left his property under the Mill Plain
23 overpass on the North Side of Mill Plain Boulevard while he went to get a meal at the Share
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1 House. *Id.* When Mr. Sparks returned, all his possessions were gone, but he noticed a work
2 crew van in the area, so he approached them. *Id.* He maintains that he could see some of his
3 property in the trailer behind the work crew van. *Id.*, at 3. He spoke to the work crew
4 supervisor, who was wearing a Clark County Department of Corrections uniform. *Id.* Mr.
5 Sparks states that he asked for his stuff back (especially his medications) and the crew supervisor
6 refused. *Id.* He states that he did not have any notice that Clark County was going to take his
7 property and was given no information on how to retrieve it. *Id.* The following Monday, Mr.
8 Sparks went to the Clark County Sheriff's property storage department to see if they had his
9 possessions. *Id.* They told him they did not have any of his property. *Id.* He asserts that the
10 property that was removed included a computer, clothes, sleeping bags, shoes, tent, flashlights,
11 prescription glasses, medication, toiletries, food, and other personal items. *Id.*, at 2.

12 Joe Hillstead filed a declaration in this case, and states that in June of 2014, he served on
13 a Clark County Corrections work crew. Dkt. 38-10, at 2. His supervisor was named Jeff. *Id.*
14 Mr. Hillstead states that the crew traveled in a van which pulled a trailer that had a porta-potty.
15 *Id.* He indicates that the crew would drive around Vancouver, to see if there was trash to pick
16 up. *Id.* According to Mr. Hillstead, Jeff would take them to sites where he knew homeless
17 people regularly camped. *Id.* If they saw camping gear at these sites, they would stop and Jeff
18 would instruct the crew to pick up everything and place it in the trailer. *Id.* Mr. Hillstead states
19 that during the three days he worked with Jeff, they cleared five or six camps. *Id.* Mr. Hillstead
20 feels that none of the property, which included camping gear, clothes, and food, appeared to be
21 abandoned. *Id.* He felt like Jeff "had a particular interest in finding property that belonged to
22 homeless people in order to have the crew pick it up and remove it." *Id.*, at 3. At the end of their
23 shifts, the crew took the property to the dump. *Id.* Mr. Hillstead did not see anyone make an
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1 effort to determine to whom the property belonged or to keep it so that it could be retrieved. *Id.*

2 No notices were left to indicate who had taken the property. *Id.*

3 Since December of 2014, Danielle Chumley (who also filed a declaration in this case)
4 states that she has been serving on and off on Clark County Corrections work crews. Dkt. 38-11.
5 Like Mr. Hillstead, she states that she also rode in a van pulling a trailer. *Id.* Ms. Chumley
6 indicates that they were instructed to hike the trails in the parks and look for homeless camps.
7 *Id.* When they found one, the crew chief would go to the camp and tell anybody there that they
8 had 15 minutes to take what they could carry. *Id.* She asserts that the crew chief would threaten
9 to call the police if the campers refused to leave. *Id.* Ms. Chumley states that the crew was then
10 instructed to pick up all things left by the campers, even if the campers asked to be allowed to
11 keep the property. *Id.* She alleges that the campers were given no prior warning of the clean up.
12 *Id.* She states that the property was placed in the trailer, which at the end of the day, was taken
13 to the dump and everything was thrown away. *Id.* According to Ms. Chumley, who participated
14 in this process several times, no one was allowed to have anything once it was placed in the
15 trailer. *Id.* She did not observe anyone telling campers where or how they could retrieve their
16 property. *Id.* Ms. Chumley felt it was “impossible” for these people to get their stuff back
17 because it was all taken to the dump at the end of the day. *Id.*, at 3.

18 After this lawsuit was filed, in 2015, on October 1 and October 6, 2015, Ms. Biffle
19 created a PowerPoint presentation and conducted a training to clarify her expectations with her
20 work crew supervisors regarding homeless property. Dkt. 38-13, at 5-6. She was aware that the
21 policy was that the work crews were not to remove property at what appeared to be homeless
22 camp sites, but became aware that some clarification would be helpful to her crew supervisors.

1 Dkt. 43-4, at 16. Later, she had several meetings with the crew supervisors to discuss how to
2 identify property that may not be abandoned. Dkt. 43-4, at 17-21.

3 In their Amended Complaint, Plaintiffs make claims under the U.S. Constitution for
4 violation of their rights against unreasonable seizures pursuant to the Fourth Amendment and
5 violation of their due process rights under Fifth and Fourteenth Amendments. Dkt. 22, at 17-18.
6 They also make claims for conversion under Washington law. *Id.* Plaintiffs seek damages,
7 injunctive, and declaratory relief. *Id.* They also seek attorneys' fees and costs. *Id.*

8 **B. PENDING MOTIONS**

9 **1. Plaintiffs' Motion for Partial Summary Judgment**

10 Plaintiffs now move for partial summary judgment finding Clark County and the
11 individual Defendants liable for the "unlawful taking of their personal property." Dkt. 37. They
12 argue that County is liable for the losses of Gavin, Kravitz, Mee, Lentz, and Ellis because their
13 losses occurred under the March 2012 WP 115, which was an unconstitutional policy. *Id.* They
14 maintain that the County is liable for the losses of Fuller, Sparks, and Bradish because even
15 though there was a policy change, the crews were not trained on the new policy and continued to
16 behave as they did under the old policy. *Id.* Plaintiffs argue that there is undisputed evidence
17 that Mr. Miller violated at least Mr. Ellis's rights and so should be held liable. *Id.* Plaintiffs
18 argue that Ms. Harper developed both the March 2012 and June 2013 versions of WP 115, and
19 Ms. Selga approved them. *Id.* They argue that both were "personally involved" in depriving
20 Plaintiffs of their property because they participated in establishing the unconstitutional policy
21 and failed to train the staff after the policy was changed. *Id.* Plaintiffs argue that Judge
22 Hagensen "was nominally the chief policy maker" during the relevant period so should be held
23 "personally responsible." *Id.* Plaintiffs assert that Defendants Judge Hagensen and Biffle are
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1 also individually liable because they failed to train their staff after the WP 115 was changed in
2 June of 2013. (Plaintiffs then cite case law for municipal/county liability – not individual
3 supervisor liability). *Id.* Plaintiffs argue that the County is liable to them for conversion because
4 it is vicariously liable for the torts of its employees. *Id.* They assert that Mr. Miller is liable to
5 Mr. Ellis for conversion. *Id.*

6 Defendants respond and argue that Plaintiff's motion should be denied. Dkt. 47. They
7 argue that as to Plaintiffs Gavin, Kravitz, Lentz, and Fuller there are issues of fact as to who took
8 their property – Defendants or some other entity or individual. *Id.* They argue that there are also
9 issues of fact as to whether the property of Plaintiffs Gavin, Kravitz, Lentz, and Fuller was
10 abandoned. *Id.* Defendants argue that Plaintiffs' motion appears to address only their due
11 process claims. *Id.* Defendants argue that to the extent that Plaintiffs move for summary
12 judgment on their due process claims, their motion should be denied because any process that
13 was due is satisfied through the Washington State Tort Claim Act. *Id.* They argue that the
14 Washington State Tort Claim Act provides sufficient post-deprivation process because the
15 deprivation was caused by unauthorized acts of their employees. *Id.* (citing *Pratt v. Taylor*, 451
16 U.S. 527, 538 (1981)). The Defendants argue that Plaintiff's motion for summary liability
17 against the individual Defendants Hagensen, Selga, Biffle, and Harper should not be granted
18 because there is no evidence that these Defendants actively participated in the actual work of the
19 work crews, or were in some other manner complicit in the taking of property that was not
20 abandoned. *Id.* They argue that Plaintiffs are not entitled to a judgment of liability against Mr.
21 Miller, and that the claim is "more properly a claim under the Washington Tort Claim Act." *Id.*
22 Defendants argue that to the extent that Plaintiffs seek a judgment against them for not
23 implementing training regarding what constituted abandoned property, Plaintiffs failed to present
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1 “a legal standard that should have been provided in training and implemented in practice.” *Id.*

2 Plaintiffs reply, and argue that there are no issues of fact as to whether the property was
3 abandoned or whether the Clark County Corrections work crews took their possessions. Dkt. 48.
4 They argue that their motion regarding their due process claims should not be denied because
5 post-deprivation remedies do not save unconstitutional acts taken pursuant to established
6 procedures as was the case here. *Id.* (citing *Zimmerman v. City of Oakland*, 255 F.3d 734, 738
7 (9th Cir. 2001)). They point out that despite the Defendants urging, they are not only making their
8 motion for partial summary judgment on their claims under the due process clauses but also
9 under the Fourth Amendment. *Id.* Plaintiffs argue that Defendants make no argument that their
10 actions were reasonable under the Fourth Amendment, and so Plaintiffs’ assert that their motion
11 as to these claims should be granted. *Id.* Plaintiffs argue that Defendants do not meaningfully
12 respond to their motion on their conversion claims, and so, assert that their motion should be
13 granted on those claims. *Id.*

14 2. Defendants’ Motion for Summary Judgment

15 Defendants move for dismissal of Plaintiffs Gavin, Kravitz, Lentz, and Fuller’s claims,
16 arguing, as they did in their response to Plaintiffs’ motion, that these Plaintiffs have failed to
17 show that Clark County had anything to do with their losses. Dkt. 42. Defendants argue that the
18 claims asserted against Judge Hagensen should be dismissed because none of the Plaintiffs
19 complained about policies of which he approved. *Id.* Defendants note that Plaintiffs complain
20 about the implementation of the policies, but make no showing that Judge Hagensen had any
21 knowledge of the wrongful dispositions of property before being served with the Complaint in
22 this case. *Id.* Defendants argue that claims against Ms. Selga should be dismissed because
23 although she approved the policies, Plaintiffs do not complain about the policies, but about their
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1 implementation, which was delegated to Ms. Harper and Ms. Biffle. *Id.* She did not handle the
 2 day to day operation of the crews. *Id.* They assert that Plaintiffs have not shown that actions on
 3 the part of Ms. Selga, Ms. Harper, or Ms. Biffle resulted in their losses. *Id.* Defendants also
 4 move for dismissal of the claims against Defendants Donald Bronson, Dennis David, Keith
 5 Gappmeyer, Robert Kramer, and Thomas Stillman, all of whom are work crew supervisors that
 6 work for Clark County. *Id.* Defendants argue that although the Complaint makes claims for
 7 violations of the Fourth, Fifth and Fourteenth Amendments, “[i]t seems clear that the Court need
 8 focus only on whether there is a properly asserted Due Process Claim.” *Id.*, at 10. Citing *Pratt*
 9 *v. Taylor*, 451 U.S. 527, 538 (1981), Defendants again argue that the Due Process claims should
 10 be dismissed because Washington State Tort Claim Act provides sufficient process, even if it is
 11 post-deprivation, because all acts here, to the extent they occurred, were unauthorized. *Id.*

12 Plaintiffs generally oppose Defendants motion, but in their Response to Defendants’
 13 motion, Plaintiffs stipulate to the dismissal of Defendants Donald Bronson, Dennis David, Keith
 14 Gappmeyer, Robert Kramer, and Thomas Stillman. Dkt. 45, at 15. These parties should be
 15 dismissed and no further analysis is need as to the claims asserted against them. Plaintiffs argue
 16 that the rest of Defendants’ motion should not be granted, raising the same arguments made in
 17 their motion and in the reply to their motion. Dkt. 45.

18 **II. DISCUSSION**

19 **A. SUMMARY JUDGMENT STANDARD**

20 Summary judgment is proper only if the pleadings, the discovery and disclosure materials
 21 on file, and any affidavits show that there is no genuine issue as to any material fact and that the
 22 movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The moving party is
 23 entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient
 24

1 showing on an essential element of a claim in the case on which the nonmoving party has the
 2 burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). There is no genuine issue
 3 of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find
 4 for the non moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586
 5 (1986)(nonmoving party must present specific, significant probative evidence, not simply “some
 6 metaphysical doubt.”). *See also* Fed.R.Civ.P. 56(e). Conversely, a genuine dispute over a
 7 material fact exists if there is sufficient evidence supporting the claimed factual dispute,
 8 requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty*
 9 *Lobby, Inc.*, 477 .S. 242, 253 (1986); *T.W. Elec. Service Inc. v. Pacific Electrical Contractors*
 10 *Association*, 809 F.2d 626, 630 (9th Cir. 1987).

11 The determination of the existence of a material fact is often a close question. The court
 12 must consider the substantive evidentiary burden that the nonmoving party must meet at trial –
 13 e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254, *T.W. Elect.*
 14 *Service Inc.*, 809 F.2d at 630. The court must resolve any factual issues of controversy in favor
 15 of the nonmoving party only when the facts specifically attested by that party contradict facts
 16 specifically attested by the moving party. The nonmoving party may not merely state that it will
 17 discredit the moving party’s evidence at trial, in the hopes that evidence can be developed at trial
 18 to support the claim. *T.W. Elect. Service Inc.*, 809 F.2d at 630 (relying on *Anderson, supra*).
 19 Conclusory, non specific statements in affidavits are not sufficient, and “missing facts” will not
 20 be “presumed.” *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888-89 (1990).

21 **B. CLAIMS UNDER 42 U.S.C. § 1983 GENERALLY**

22 In order to state a claim under 42 U.S.C. § 1983, a complaint must allege that (1) the
 23 conduct complained of was committed by a person acting under color of state law, and that (2)
 24

1 the conduct deprived a person of a right, privilege, or immunity secured by the Constitution or
2 laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other*
3 *grounds, Daniels v. Williams*, 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to
4 remedy an alleged wrong only if both of these elements are present. *Haygood v. Younger*, 769
5 F.2d 1350, 1354 (9th Cir. 1985), *cert. denied*, 478 U.S. 1020 (1986).

6 In order to state a claim under 42 U.S.C. § 1983, a plaintiff must set forth the specific
7 factual bases upon which he claims each defendant is liable. *Aldabe v. Aldabe*, 616 F.2d 1089,
8 1092 (9th Cir. 1980). Vague and conclusory allegations of official participation in a civil rights
9 violations are not sufficient to support a claim under § 1983. *Ivey v. Board of Regents*, 673 F.2d
10 266 (9th Cir. 1982).

11 Plaintiff's Partial Motion for Summary Judgment (Dkt. 37) as to the claims of Plaintiffs
12 Lentz, Kravitz (in regard to his December 2012 loss) and Fuller should be denied. Plaintiffs
13 have failed to show that there are no issues in dispute as to whether their losses were by a
14 "person acting under the color of law" who is a Defendant here. Defendants properly point out
15 that there are issues of fact as to whether a Clark County Corrections work crew took these
16 Plaintiffs' property. Dkt. 47. While Plaintiff Lentz states, in part of her declaration, that a Clark
17 County Corrections work crew took her possessions, she also states in that same pleading that
18 she knew it was a work crew because the van had "City of Vancouver markings." Plaintiffs do
19 not dispute that the City of Vancouver also had work crews that cleaned up and performed
20 landscaping work. Her motion for summary judgment should be denied.

21 Likewise, in regard to his December 2012 loss (he also claims a loss in August 2012),
22 Plaintiff Kravitz states that while at a holiday party at the Share House his possessions were
23 taken from a spot in the City of Vancouver. Dkt. 38-6, at 2. He was not present when they were
24

1 taken, nor did he see Clark County Corrections work crew in the area. *Id.* Mr. Kravitz states
2 that he heard from others that a work crew had been through and taken other people's property.
3 *Id.* Defendants point out that there are other work crews, not just those that belong to the
4 County. There are issues of fact as to who took Mr. Kravitz's property in December of 2012.
5 His motion for summary judgment on liability should not be granted for his December 2012 loss.

6 Plaintiff Fuller's motion for summary judgment regarding liability should also be denied.
7 Plaintiff Fuller also was not present when his possessions were taken from Esther Short Park,
8 and did not see a work crew in the area. Dkt. 38-4, at 2. While he maintains that his deceased
9 friend told him that when he arrived Mr. Fuller's stuff was gone and that a work crew was there
10 throwing stuff away, Defendants properly point out that the statements of this deceased man may
11 not be admissible. Certainly, it is not appropriate to grant summary judgment for Mr. Fuller on
12 the strength of these assertions alone. Plaintiffs' motion for summary judgment on behalf of Mr.
13 Fuller should be denied.

14 Defendants argue that Plaintiff Gavin is not entitled to summary judgment, in part,
15 because there are issues of fact as to who took his property. Dkt. 47. Contrary to Defendants'
16 assertions, Plaintiff Gavin states that his property was taken by a Clark County Corrections work
17 crew. Dkt. 38-5, at 2. He states that he saw the work crew van. *Id.* While he does not
18 remember what any of the individuals looked like, he states that he asked for his property back,
19 but the crew wouldn't tell him anything. Dkt. 38-5, at 2 and 43-7, at 10. There is no contrary
20 evidence in the record. Plaintiff Gavin's motion for partial summary judgment should not be
21 denied on this basis, and his motion should be granted, in part, as explained below.

Accordingly, this opinion will now consider the constitutional claims against the Defendants based on claims by Plaintiffs Gavin, Kravitz (for the August 2012 loss), Mee, Ellis, Bradish, and Sparks.

C. CLAIMS UNDER 42 U.S.C. § 1983 ASSERTED AGAINST CLARK COUNTY

A county or municipality is responsible for a constitutional violation only when an action taken pursuant to a county or municipal policy of some nature caused the violation. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690–91, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). In order to successfully plead §1983 liability on the part of the County, Plaintiffs must allege: (1) they were deprived of a constitutional right; (2) the County had a policy; (3) the policy amounted to a deliberate indifference to their constitutional rights; and (4) the policy was the moving force behind the constitutional violation. *Mabe v. San Bernardino Cty., Dep't of Pub. Soc. Servs.*, 237 F.3d 1101, 1110–11 (9th Cir. 2001)(*internal quotations omitted*).

Plaintiffs Gavin, Kravitz (for the August 2012 loss), Mee, and Ellis assert that their Fourth, Fifth, and Fourteenth Amendment rights were violated while the County's March 2012 WP 115 policy was in effect. Plaintiffs Bradish and Sparks assert that their rights were violated after the 2013 change in policy due to the County's long standing practices and a failure to train.

"The Fourth and Fourteenth Amendments protect homeless persons from government seizure and summary destruction of their unabandoned, but momentarily unattended, personal property." *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1027 (9th Cir. 2012). In *Lavan*, the Ninth Circuit held that homeless individuals, who brought a case against the City of Los Angeles for the seizure and destruction of their personal property which had been left unattended on city sidewalks, had shown a likelihood of success on the merits of their claims for relief under both the Fourth and Fourteenth Amendments. *Id.* There, as here, employees of the city, pursuant to a

city ordinance, would pick up and throw away property which had been left on the city sidewalks. *Id.* The property taken in *Lavan* was similar to the property taken in this case and included personal identification documents, family memorabilia, blankets, clothes, and shelter. *Id.* The *Lavan* court noted that the city employees did not “have a good faith belief” that the property was abandoned, particularly because, in some cases, the individual plaintiffs or others would inform the city employees that the property was not abandoned. *Id.* Despite this knowledge, the city workers would take the property and immediately destroy it. *Id.* The court held that the plaintiffs had a Fourth Amendment right in not having their property unreasonably seized, and that the city’s seizure and summary disposal of the property was unreasonable. *Id.* Further, the court held that the plaintiffs had a protected interest in the continued ownership of their property, and so the city had to comport with the requirements of due process. *Id.* The city admitted that it failed to provide notice or any opportunity to be heard before it destroyed the property. *Id.* The court noted that the “decision to forego any process before permanently depriving [plaintiffs] of protected property interests is especially troubling given the vulnerability of Skid Row’s homeless residents.” *Id.* It concluded that the plaintiffs were likely to succeed on the merits of their due process claims. *Id.*

1. Fourth Amendment Claims Against Clark County

The Fourth Amendment provides that, “the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated....” U.S. CONST. amend. IV, § 1. “A ‘seizure’ of property occurs when there is some meaningful interference with an individual’s possessory interests in that property.” *Lavan*, at 1027(holding that “the unabandoned property of homeless persons is not beyond the reach of the protections enshrined in the Fourth and Fourteenth Amendments”). Accordingly, the

1 government's "seizure and destruction of . . . property remains subject to the Fourth
2 Amendment's reasonableness requirement." *Id.*, at 1029.

3 By seizing and destroying Plaintiffs Gavin, Kravitz (in August of 2012), Mee, and Ellis's
4 personal effects pursuant to the March 2012 WP 115, the County "meaningfully interfered with
5 [these Plaintiffs'] possessory interests in that property." *Lavan*, at 1030. Further, the County's
6 immediate destruction of the property (rather than holding it for possible return) made the seizure
7 unreasonable under the Fourth Amendment. *Id.*, at 1030-1031 (city's immediate destruction of
8 property rendered the seizure unreasonable). "The Fourth Amendment forbids . . . the
9 destruction of a person's property, when that destruction is unnecessary—i.e., when less
10 intrusive, or less destructive, alternatives exist." *San Jose Charter of Hells Angels Motorcycle*
11 *Club v. City of San Jose*, 402 F.3d 962, 977–78 (9th Cir. 2005).

12 Likewise, the County's seizure and immediate destruction of Plaintiffs' Bradish and
13 Sparks' personal property pursuant to its long standing custom of picking up and immediately
14 destroying unattended property was unreasonable and violated Plaintiffs Bradish and Sparks'
15 Fourth Amendment rights. An official policy upon which county liability is premised may be
16 either "formal or informal." *City of Saint Louis v. Praprotnik*, 485 U.S. 112, 131 (1988). An
17 informal policy exists when a plaintiff "can prove the existence of a widespread practice that,
18 although not authorized by an ordinance or an express municipal policy, is so permanent and
19 well settled as to constitute a custom or usage with the force of law." *Id.*, at 127. There is
20 sufficient evidence in the record to conclude that even after the policy change, County
21 employees continued to pick up and destroy at least some unattended property.

22 Defendants' argument that it wasn't the March 2012 WP 115 policy itself that was a
23 problem (because it only addressed abandoned property), but the execution of it, is misplaced.

Contrary to Defendants' assertions, the policy states that work crews were to "immediately" clean up all homeless camps "if a camp has been abandoned or there is no one currently at the site." The only evidence in the record is that the County's employees took all unattended property and then immediately destroyed the property, regardless of whether the property was abandoned. Further, as to Plaintiffs Gavin, Kravitz (for the August 2012 loss), Ellis, Bradish, and Sparks, the County employees were told at the time of the taking that the property was not abandoned, so it cannot now claim a "reasonable good faith belief" that the property was abandoned. The County also cannot now claim that it was justified in the takings due to Plaintiffs' violations of various laws regarding illegal camping. "Violation of [an ordinance] does not vitiate the Fourth Amendment's protections of one's property. Were it otherwise, the government could seize and destroy any illegally parked car or unlawfully unattended dog without implicating the Fourth Amendment." *Lavan*, at 1029. Plaintiffs Gavin, Kravitz (for the August 2012 event), Mee, Ellis, Bradish, and Sparks are entitled to partial summary judgment on their Fourth Amendment claims against the County.

2. Fifth and Fourteenth Amendment Claims against Clark County

The Due Process Clause of the Fifth Amendment guarantees that "[n]o person shall ... be deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V. The Fifth Amendment's due process clause, however, "only applies to the federal government." *Bingue v. Prunchak*, 512 F.3d 1169, 1174 (9th Cir. 2008)(citing *Betts v. Brady*, 316 U.S. 455, 462 (1942))("Due process of law is secured against invasion by the federal Government by the Fifth Amendment and is safe-guarded against state action in identical words by the Fourteenth.").

1 Plaintiffs make no claims against the federal government, so their Fifth Amendment
2 claims should be dismissed. Defendants' motion to dismiss all Plaintiffs' Fifth Amendment
3 claims (Dkt. 42) should be granted and Plaintiffs' motion for summary judgment on their Fifth
4 Amendment claims (Dkt. 37) should be denied.

5 Under the Fourteenth Amendment, no State shall "deprive any person of life, liberty, or
6 property, without due process of law." U.S. CONST. amend. XIV, § 1. "Any significant taking
7 of property by the State is within the purview of the Due Process Clause." *Lavan*, at 1031
8 (*quoting Fuentes v. Shevin*, 407 U.S. 67, 86 (1972)). Plaintiffs' claims for violation of their due
9 process rights, then, are more properly asserted against Defendants under the Fourteenth
10 Amendment. *See Lavan*, at 1030. Application of the Fourteenth Amendments' due process
11 protections require the familiar two-stage analysis: (1) "whether the asserted individual interests
12 are encompassed within the Fourteenth Amendment's protection of 'life, liberty or property;'"
13 and (2) "if protected interests are implicated," then it must be determined "what procedures
14 constitute 'due process of law.'" *Id.* (*citing Ingraham v. Wright*, 430 U.S. 651, 672 (1977)).

15 The property interests implicated here are the Plaintiffs' interests "in the continued
16 ownership of their personal possessions." *Lavan*, at 1031. Plaintiffs contend, and there is no
17 evidence to the contrary in the record, that they owned the property in question, and had not
18 abandoned it. Accordingly, they maintained a protected interest in their personal property.
19 *Lavan*, at 1031. "Because homeless persons' unabandoned possessions are "property" within the
20 meaning of the Fourteenth Amendment, [Clark County] must comport with the requirements of
21 the Fourteenth Amendment's due process clause if it wishes to take and destroy them." *Id.*, at
22 1032.

1 Generally, “individuals must receive notice and an opportunity to be heard before the
2 Government deprives them of property.” *United States v. James Daniel Good Real Prop.*, 510
3 U.S. 43, 48 (1993). Aside from the case of Mr. Bradish, Clark County does not contend that it
4 gave Plaintiffs any notice at all or an opportunity to be heard before it permanently deprived
5 them of their property. Further, there is no evidence in the record that the ten minutes notice
6 given Mr. Bradish was reasonable. “[D]ue process requires law enforcement to take reasonable
7 steps to give notice that the property has been taken so the owner can pursue available remedies
8 for its return.” *Lavan*, at 1032. Moreover, the County failed to provide any process for the
9 possible return of the property. The County’s policy of same day destruction of the property
10 with no procedural protections “presents an enormous risk of erroneous deprivation.” *Id.*

11 Defendants maintain that there was an adequate post deprivation remedy available for
12 Plaintiffs in the Washington State Tort Claim Act, RCW 4.92.090-.100 (state/county liable for
13 the tortious conduct of officials and employees), and so Plaintiffs’ procedural due process rights
14 were not violated. Dkts. 45, 47, and 49. They argue that the Washington State Tort Claim Act
15 provides sufficient post-deprivation process because the deprivation was caused by unauthorized
16 acts of their employees. *Id.* (citing *Pratt v. Taylor*, 451 U.S. 527, 538 (1981)). They maintain
17 that the taking of unabandoned property that occurred before the change in policy was an
18 unauthorized act because the March 2012 WP 115 only addressed “abandoned” property. *Id.*
19 Contrary to Defendants’ assertions, the policy states that work crews were to “immediately”
20 clean up all homeless camps “if a camp has been abandoned or there is no one currently at the
21 site.” Again, the only evidence in the record is that the County’s employees took all unattended
22 property and then immediately destroyed the property. Accordingly, work crews were following
23 the policy, and not acting in an unauthorized manner.
24

Defendants also argue that to the extent that the claims are based on the taking of property after the change in policy in June of 2013, the work crews' actions were unauthorized acts, and so the post deprivation remedy of the Washington Tort Claims Act provides sufficient due process. *Id.* Defendants' arguments are unavailing, however. In the Ninth Circuit "post deprivation remedies [cannot] save an otherwise unconstitutional act from unconstitutionality in cases in which the [governmental actor] acted pursuant to some established procedure." *Zimmerman v. City of Oakland*, 255 F.3d 734, 738 (9th Cir 2001). When a "deprivation occurs pursuant to . . . [an] institutionalized practice, it is neither random nor unauthorized, but wholly predictable, authorized, and within the power of the [county] to control, and the justifications for post-deprivation remedies does not apply and the normal pre-deprivation hearing is required to satisfy due process." *Id.* The evidence in this case is that the long standing practice of, at least sometimes, taking unattended property continued even after the change in policy. The County's failure to provide pre-deprivation process violated Plaintiffs' Gavin, Kravitz (for the August 2012 event), Mee, Ellis, Bradish, and Sparks' rights under the Fourteenth Amendment.

The Defendants' motion to summarily dismiss Plaintiffs' Fifth Amendment claims (Dkt. 42) should be granted. Plaintiffs Gavin, Kravitz (for the August 2012 event), Mee, Ellis, Bradish, and Sparks' motion for summary judgment on their Fourteenth Amendment claim against the County (Dkt. 37) should be granted. The Defendants' motion to summarily dismiss all Plaintiffs' Fourteenth Amendment claims (Dkt. 42) should be denied.

D. CLAIMS UNDER 42 U.S.C. § 1983 ASSERTED AGAINST INDIVIDUAL DEFENDANTS

The motions regarding claims asserted against Defendants Miller, Judge Hagensen, Ms. Selga, Ms. Biffle, and Ms. Harper, in their individual capacities, will now be addressed.

a. Work Crew Chief Defendant Miller

Plaintiff Ellis's motion for partial summary judgment (Dkt. 37) regarding Mr. Miller's liability should be granted. Plaintiff Ellis states that on September 29, 2012, his back pack was taken from a bus stop by a work crew supervised by Miller. Dkt. 38-3, at 2. Plaintiff indicates that he was helping a distressed motorist and could see the bus stop. *Id.* Plaintiff Ellis approached Defendant Miller, asked for the return of his property, and Miller refused. *Id.* Plaintiff was not given any notice that his property was being taken, or told how to retrieve his property. *Id.* The undisputed evidence in the record is that at the end of the day, the work crews threw everything they collected into the trash. There is no evidence that anything to the contrary happened to Mr. Ellis's property here. By seizing and destroying Plaintiff Ellis's personal effects, Defendant Miller "meaningfully interfered with [Plaintiff Ellis's] possessory interests in that property," and the immediate destruction of that property made the seizure unreasonable. *Lavan*, at 1030. Defendant Miller should be held liable for violating Plaintiff Ellis's Fourth Amendment rights.

Plaintiffs' motion for partial summary judgment on liability against Defendant Miller in regard to all the remaining Plaintiffs (Dkt. 37) should be denied, and Defendants' motion for summary dismissal of the remaining Plaintiffs' claims against Defendant Miller (Dkt. 42) should be granted. There is no evidence in the record that Defendant Miller played a role in any of the other Plaintiffs' deprivations. With the exception of claims by Plaintiff Ellis, claims against Defendant Miller should be dismissed.

b. Liability of the Work Crew Chiefs' Supervisors Under § 1983

A defendant cannot be held liable under 42 U.S.C. § 1983 solely on the basis of supervisory responsibility or position. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 694 n.58 (1978); *Padway v. Palches*, 665 F.2d 965 (9th Cir. 1982). "A defendant may

1 be held liable as a supervisor under § 1983 ‘if there exists either (1) his or her personal
2 involvement in the constitutional deprivation, or (2) a sufficient causal connection between the
3 supervisor's wrongful conduct and the constitutional violation.’” *Starr v. Baca*, 652 F.3d 1202,
4 1207 (9th Cir. 2011)(*quoting Hansen v. Black*, 885 F.2d 642, 646 (9th Cir.1989)).

5 There is no allegation that Defendants Judge Hagensen, Selga, Harper, or Biffle were
6 personally involved in the deprivations at issue here. Accordingly, the Plaintiffs must show that
7 these various supervisors “breached a duty to plaintiff which was the proximate cause of the
8 injury.” *Starr*, at 1207.

9 Plaintiffs’ motion for partial summary judgment against Defendant Judge Hagensen, in
10 his individual capacity, (Dkt. 37) should be denied and Defendants’ motion to summarily dismiss
11 the constitutional claims against him (Dkt. 42) should be granted. Both parties, in their briefing,
12 appear to conflate individual liability of a supervisor with liability of the County. For example,
13 Plaintiffs’ assert that Defendant Judge Hagensen is liable to them because he was “nominally the
14 chief policy maker.” Dkt. 37. However, “constitutional tort claims against supervisory
15 defendants turn on the requirements of the particular claim—and, more specifically, on the state
16 of mind required by the particular claim—not on a generally applicable concept of supervisory
17 liability.” *OSU Student All. v. Ray*, 699 F.3d 1053, 1071 (9th Cir. 2012). The record indicates
18 that Defendant Harper drafted, and Defendant Selga approved of, the March 2012 WP 115
19 policy. Dkts. 38-16, at 5-6 and 38-18, at 2 (containing Defendant Selga’s signature). While
20 Judge Hagensen testified that he and/or the other judges generally approved policies, it is not
21 clear that he/they did so in this instance. Defendant Selga signed off on the policy, not Judge
22 Hagensen. Defendant Selga testified that in the case of a revision of an old policy, none of the
23 judges played a role in approving revisions. Dkt. 43-2, at 7. Defendant Selga states she doesn’t
24

1 recall if this is a revision of an older policy. *Id.* Accordingly, Plaintiffs fail to point to evidence
2 that Judge Hagensen approved the March 2012 WP 115 policy. Their motion for summary
3 judgment against him based on his being the party that generally approves or actually approved
4 the March 2012 WP 115 should be denied and Defendants' motion granted.

5 Plaintiffs further allege that Judge Hagensen is individually liable because he "was aware
6 work crews were cleaning up property and disposed [sic] of it." Dkt. 37, at 16. Plaintiffs,
7 however, cite a portion of the record where Judge Hagensen testified that he was aware that the
8 work crews were picking up **abandoned** property. Dkt. 43-1, at 7-8 (*emphasis added*).

9 "Warrantless searches or seizures of abandoned property do not violate the Fourth amendment."

10 *Untied States v. Nordling*, 804 F.2d 1466, 1469 (9th Cir. 1986). He should not be held

11 personally liable on based on his knowledge that County employees were picking up abandoned

12 property. To the extent that Plaintiffs seek summary judgment against him on this basis, their

13 motion should be denied and Defendants' motion to dismiss their claims granted. Plaintiffs

14 further argue that "[t]he judges never took any steps to determine if the work crews attempted to

15 locate the owner of the property that had some apparent value." Dkt. 37, at 16. Even assuming

16 that knowledge of a Fourth Amendment violation is sufficient for supervisor liability under §

17 1983, Plaintiffs fail to show that Judge Hagensen or any of the other judges were aware that

18 anything but abandoned property was being removed. The record indicates that once he did

19 become aware of that there were such assertions, he instituted a policy in March of 2013 that no

20 property that appeared to belong to homeless people was to be picked up at all. Dkt. 43-1, at 10.

21 Plaintiffs assert that Judge Hagensen is individually liable for failing to adequately train staff

22 after the WP 115 policy was changed. Dkt. 37. Defendants point out that Judge Hagensen was

23 the presiding judge 2010-2013 (Dkt. 38-16, at 4); the only Plaintiffs who had a property loss

1 after the policy change were Plaintiffs Bradish and Sparks, both of whom suffered their losses
2 after July of 2014. (There are issues of fact as to who took Plaintiff Fuller's property in April or
3 May of 2013, so he is not entitled to summary judgment regarding Judge Hagensen's liability.)
4 Plaintiffs point to no evidence supporting their theory that Judge Hagensen should be held
5 individually liable for Plaintiffs Bradish and Sparks' losses based on a failure to train. He was
6 then no longer the presiding judge. Further, even if Mr. Fuller were able to show that his May
7 2013 loss was a result of County action, a single incident would not give rise to the requisite
8 state of mind to hold Judge Hagensen personally liable for a failure to train.

9 To hold Judge Hagensen liable in his individual capacity, Plaintiffs must show that Judge
10 Hagensen "was deliberately indifferent to the need to train subordinates, and the lack of training
11 actually caused the constitutional harm or deprivation of rights." *Flores v. Cty. of Los Angeles*,
12 758 F.3d 1154, 1158–59 (9th Cir. 2014). Under this standard, Plaintiff Fuller must point to facts
13 that show that Judge Hagensen "disregarded the known or obvious consequence that a particular
14 omission in their training program would cause [County] employees to violate citizens'
15 constitutional rights." *Flores v. Cty. of Los Angeles*, 758 F.3d 1154, 1159 (9th Cir. 2014).
16 Plaintiffs fail to point to any facts that Judge Hagensen acted or failed to act with the requisite
17 state of mind in regard to the failure to train. Plaintiffs' claims against Judge Hagensen, in his
18 individual capacity, should be dismissed.

19 Both Plaintiffs' motion for summary judgment and Defendants' motion for summary
20 judgment on Plaintiffs' claims against Defendant Selga, in her individual capacity, (Dkts. 37 and
21 42) should be denied. Plaintiffs argue that Defendant Selga should be held liable as the
22 individual that approved the March 2012 WP 115. There are issues of fact as to whether there is
23 a sufficient causal connection between her decision to approve the policy and the constitutional
24

1 deprivations that resulted. *Baca*, at 1207. There are also issues of fact as to whether her conduct
2 in approving the policy “showed a reckless or callous indifference to the rights of others.” *Henry*
3 *A. v. Willden*, 678 F.3d 991, 1004 (9th Cir. 2012). Plaintiffs also argue that Defendant Selga
4 should be held personally liable for her failure to train the staff after the policy was changed
5 prohibiting work crews from removing property from homeless camps. To the extent Plaintiffs
6 seek to hold Defendant Selga liable in her individual capacity regarding her failure to train staff
7 after the change in policy, Plaintiffs point to no evidence that she had the required state of mind,
8 that she had “disregarded a known or obvious consequence” of a failure to train.

9 Plaintiffs’ constitutional claims against Defendant Biffle in her individual capacity should
10 also be dismissed. Defendant Biffle became program manager in January of 2014, after the
11 policy had changed. Plaintiffs fail to make any showing that Defendant Biffle acted in any
12 manner with a deliberate disregard for their constitutional rights. She understood that the work
13 crews were only picking up abandoned materials and that they were no longer cleaning up camp
14 sites of suspected homeless individuals. Dkt. 43-4, at 8; 10-14. When she became aware that
15 more training to clarify what the word “abandoned” meant, she provided more training. Dkts.
16 38-13, at 5-6; 43-4, at 17-21. Plaintiffs’ claims against her should be dismissed.

17 Both parties’ motions for summary judgment on liability for violation of their
18 constitutional rights against Defendant Harper, in her individual capacity, (Dkts. 37 and 42)
19 should be denied. Defendant Harper drafted the March 2012 WP 115, and although she did not
20 have final policy making authority, she managed the implementation of the policy. “When a
21 supervisory official advances or manages a policy that instructs its adherents to violate
22 constitutional rights, then the official specifically intends for such violations to occur.” *OSU*
23 *Student All. v. Ray*, 699 F.3d 1053, 1076 (9th Cir. 2012). There are issues of fact as to whether
24

1 she instructed the crew supervisors to violate Plaintiffs' constitutional rights. There are also
2 issues of fact as to whether her conduct in approving the policy "showed a reckless or callous
3 indifference to the rights of others." *Henry A.*, at 1004. Plaintiffs have not shown, however,
4 that she should be held individually liable for a failure to train staff after the WP 115 was
5 changed in 2013 because there is no showing that she showed a deliberate indifference for their
6 rights in not providing further training. Both parties' motions for summary judgment on liability
7 for violation of their constitutional rights against Defendant Harper, in her individual capacity,
8 (Dkts. 37 and 42) should be denied.

9 **E. CLAIMS FOR CONVERSION**

10 Plaintiffs move for summary judgment on liability on each of the Plaintiffs' claims for
11 conversion against the County and for Plaintiff Ellis's claim for conversion against Mr. Miller.
12 Dkt. 37, at 21.

13 As above, there are issues of fact regarding who took Plaintiffs Kravitz (for the
14 December 2012 loss), Lentz, and Fuller's property. Accordingly Plaintiffs' motion for summary
15 judgment on liability as to these Plaintiffs' conversion claims (Dkt. 37) should be denied.

16 Defendants do not meaningfully oppose the remaining Plaintiffs' partial motion for
17 summary judgment on the County and Mr. Miller's liability on their conversion claims. The
18 motion (Dkt. 37) should be granted. To the extent that Defendants intend their Summary
19 Judgment Motion (Dkt. 42) to encompass this claim, the motion should be denied. They offer no
20 basis for the claims' dismissal.

21 **F. CONCLUSION**

22 Plaintiffs' Partial Motion for Summary Judgment (Dkt. 37) as to the claims of Plaintiffs
23 Lentz, Kravitz (in regard to his December 2012 loss) and Fuller should be denied. Defendants'
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1 Motion for Summary Judgment as to each of these parties' claims (Dkt. 42) should also be
2 denied. Remaining for trial is both liability and damages on Plaintiffs Lentz, Kravitz (in regard
3 to his December 2012 loss) and Fuller Fourth and Fourteenth Amendment claims against the
4 County, Defendant Selga, and Defendant Harper. Plaintiffs Lentz, Kravitz (in regard to his
5 December 2012 loss) and Fuller's claims for conversion also remain for trial.

6 Plaintiffs' Gavin, Kravitz (for the August 2012 loss), Mee, Ellis, Bradish and Sparks'
7 motion for partial summary judgment regarding liability of the County for violations of their
8 Fourth and Fourteenth Amendment rights (Dkt. 37) should be granted and Defendants' motion to
9 summarily dismiss those claims (Dkt. 42) should be denied. The issues remaining for trial on
10 Plaintiffs' Gavin, Kravitz (for the August 2012 loss), Mee, Ellis, Bradish and Sparks' claims
11 against the County for violations of their Fourth and Fourteenth Amendment rights is the amount
12 of damages. Both parties' motions (Dkts. 37 and 42) regarding the Fourth and Fourteenth
13 Amendment claims against Defendants Selga and Harper should be denied. Both liability and
14 damages on the Plaintiffs' Gavin, Kravitz (for the August 2012 loss), Mee, Ellis, Bradish and
15 Sparks' Fourth and Fourteenth Amendment claims against Defendants Selga and Harper remain
16 for trial.

17 Plaintiffs' Gavin, Kravitz (for the August 2012 loss), Mee, Ellis, Bradish and Sparks'
18 motion for summary judgment on the County's liability for conversion of their property (Dkt.
19 37) should be granted. Remaining for trial is the amount of damages for their conversion claim
20 asserted against the County.

21 Plaintiff Ellis' motion for summary judgment on Mr. Miller's liability for his conversion
22 of Mr. Ellis' property (Dkt. 37) should be granted. The amount of damages of this conversion
23 remains for trial.

Parties did not meaningfully address Plaintiffs' conversion claims against Defendants Judge Hagensen, Selga, Biffle or Harper, if any. It is unclear if such claims remain for trial or how they would differ from County liability.

All claims against Defendant Miller, except those asserted by Plaintiff Ellis should be dismissed. All claims asserted against Defendants Donald Bronson, Dennis David, Keith Gappmeyer, Robert Kramer, and Thomas Stillman should be dismissed. The caption should be amended to reflect dismissal of these parties. Constitutional claims asserted against Defendants Judge Hagensen and Biffle should be dismissed. Plaintiffs' Fifth Amendment claims should be dismissed.

III. ORDER

Therefore, it is hereby **ORDERED** that:

- Plaintiffs' Partial Motion for Summary Judgment (Dkt. 37) is:
 - **DENIED** as to:
 - All claims by Plaintiffs Kravitz (based on his December 2012 loss), Lentz, and Fuller;
 - Claims asserted against Defendant Jeffrey Miller on behalf of all Plaintiffs except Plaintiff Ellis,
 - All Plaintiffs' Fifth Amendment claims,
 - Plaintiffs' constitutional claims against Defendants Judge Hagensen, Selga, Harper, and Biffle, in their individual capacities; and
 - **GRANTED** as to:
 - Plaintiffs Gavin, Kravitz (for the August 2012 event), Mee, Ellis,

Bradish, and Sparks' Fourth and Fourteenth Amendment claims
against Clark County;

- Plaintiff Ellis's claims asserted against Defendant Jeffrey Miller;
- Plaintiffs Gavin, Kravitz (for the August 2012 event), Mee, Ellis,
Bradish, and Sparks' claims for conversion against Clark County.

- Defendants' Motion for Summary Judgment (Dkt. 42) is

- **GRANTED** as to:

- Claims asserted against Defendants Donald Bronson, Dennis
David, Keith Gappmeyer, Robert Kramer, and Thomas Stillman;
- Except Plaintiff Ellis's, all Plaintiffs' claims asserted against
Defendant Jeffrey Miller;
 - All Plaintiffs claims against Defendant Miller are
dismissed, except those by Plaintiff Ellis;
- Plaintiffs' Fifth Amendment Claims;
 - Plaintiffs' Fifth Amendment claims are dismissed;
- Constitutional claims asserted against Defendants Judge Hagensen
and Biffle, in their individual capacities;
 - Constitutional claims against Defendants Judge Hagensen
and Biffle, in their individual capacities, are dismissed;

- **DENIED** as to:

- Plaintiffs' Fourth and Fourteenth Amendment claims against the
County;
- Plaintiff Ellis's Fourth Amendment claims asserted against

1 Defendant Miller;

- 2 ▪ Plaintiffs' constitutional claims against Defendants Selga and
3 Harper, in their individual capacities; and
4 ▪ All Plaintiffs' claims for conversion.

5 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
6 to any party appearing *pro se* at said party's last known address.

7 Dated this 16th day of September, 2016.

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10 ROBERT J. BRYAN
11 United States District Judge
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